

AARON D. FORD
Attorney General
NATHAN M. CLAUS (Bar No. 15889)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
(702) 486-7629 (phone)
(702) 486-3773 (fax)
Email: nclaus@ag.nv.gov

*Attorneys for Defendants
Scott Davis, James Dzurenda, Mario Castro,
Timothy Garrett, Brian Williams,
Kara LeGrand, and Harold Wickham*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONALD GARREN,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 3:23-cv-00141-MMD-CSD

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT
ECF NO. 11
JURY TRIAL DEMANDED**

Defendants, Scott Davis, James Dzurenda, Mario Castro, Timothy Garrett, Brian Williams, Kara LeGrand, and Harold Wickham, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Nathan M. Claus, Deputy Attorney General, of the State of Nevada, Office of the Attorney General, hereby demands a jury trial and answers Plaintiff's Complaint as follows:

A. JURISDICTION

1. In answering paragraph 1, on page 1, of Plaintiff's complaint, the responding Defendants admit that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. Defendants deny that jurisdiction is proper on any other basis.

2. In answering paragraph 2, on page 1, of Plaintiff's complaint, the responding Defendants deny that Plaintiff is currently housed at Lovelock Correctional Center (LCC) but admit that at the time of the filing of the complaint, Plaintiff was housed at LCC.

3. In answering paragraphs 3, on page 1, of Plaintiff's complaint, the responding Defendants deny that any violation occurred at LCC.

B. DEFENDANTS

1. In answering paragraph 1, on page 2, of Plaintiff's complaint, the responding Defendants admit that James Dzurenda was formerly employed by NDOC as the Director of Nevada Department of Corrections and is again currently employed by NDOC as the Director. Defendants deny all remaining allegations in this paragraph.

2. In answering paragraph 2, on page 2, of Plaintiff's complaint, the responding Defendants admit that Scott Davis is employed by NDOC as an Institutional Chaplin at LCC. Defendants deny all remaining allegations in this paragraph.

3. In answering paragraph 3, on page 2, of Plaintiff's complaint, the responding Defendants admit that Mario Castro, believed to be sued as "M. Castro" is employed by NDOC as a Correctional Caseworker Specialist 2 at LCC. Defendants deny all remaining allegations in this paragraph.

4. In answering paragraph 4, on page 2, of Plaintiff's complaint, the responding Defendants admit that Timothy Garrett was formerly employed by NDOC as a Warden at LCC. Defendants deny all remaining allegations in this paragraph.

5. In answering paragraph 5, on page 2, of Plaintiff's complaint, the responding Defendants admit that Brian Willaims is employed by NDOC as the Deputy Director of Programs at NDOC. Defendants deny all remaining allegations in this paragraph.

6. In answering paragraph 6, on page 3, of Plaintiff's complaint, the responding Defendants admit that Harold Wickham was formerly employed by NDOC as the Deputy Director of Programs at NDOC. Defendants deny all remaining allegations in this paragraph.

1 7. In answering paragraph 7, on page 3, of Plaintiff's complaint, the responding
2 Defendants admit that Kara LeGrand is employed by NDOC as the Associate Warden of
3 Programs at LCC. Defendants deny all remaining allegations in this paragraph.

4 **C. NATURE OF THE CASE**

5 The answering Defendants lack knowledge or information sufficient to form a belief about
6 the truth of the allegations contained in this paragraph, and therefore denies each and
7 every allegation made in this paragraph.

8 **D. CAUSES OF ACTION**

9 **Claim I**

10 1. In answering paragraphs 1-3, on page 4 of Plaintiff's complaint, the
11 answering Defendants deny each and every allegation contained in these paragraphs.

12 2. The answering Defendants respond to the allegations contained in paragraph
13 4, on pages 3 – 5 as follows:

14 1. The answering Defendants lack knowledge or information sufficient to
15 form a belief about the truth of the allegations contained in this
16 paragraph, and therefore denies each and every allegation made in this
17 paragraph.

18 2. The answering Defendants lack knowledge or information sufficient to
19 form a belief about the truth of the allegations contained in this
20 paragraph, and therefore denies each and every allegation made in this
21 paragraph.

22 3. The answering Defendants lack knowledge or information sufficient to
23 form a belief about the truth of the allegations contained in this
24 paragraph, and therefore denies each and every allegation made in this
25 paragraph.

26 4. The answering Defendants admit that Plaintiff submitted grievance
27 2006-31-34248 on February 14, 2022, addressing Plaintiff's concerns
28 with LCC's religious activities.

2. The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.
3. The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.
4. The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.
5. The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.
6. The answering Defendants admit that Plaintiff submitted a kite about the sweat lodge ceremonies at LCC and that Associate Warden LeGrand responded to it. The answering Defendants deny each and every remaining allegation contained in this paragraph.
7. The answering Defendants admit that Plaintiff submitted grievance 2006-31-41341, addressing access to the Native American Land for religious ceremonies. The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.
8. The answering Defendants admit that grievance 2006-31-41341 was responded at the informal level by Mario Castro, Timothy Garrett at the

1 first level, and Harold Wickham at the second level. The answering
2 Defendants lack knowledge or information sufficient to form a belief
3 about the truth of the remaining allegations contained in this paragraph,
4 and therefore denies each and every allegation made in this paragraph.

5 9. The answering Defendants deny each and every allegation contained in
6 this paragraph.

7 10. The answering Defendants lack knowledge or information sufficient to
8 form a belief about the truth of the allegations contained in this
9 paragraph, and therefore denies each and every allegation made in this
10 paragraph.

11 11. The answering Defendants lack knowledge or information sufficient to
12 form a belief about the truth of the allegations contained in this
13 paragraph, and therefore denies each and every allegation made in this
14 paragraph.

15 12. The answering Defendants lack knowledge or information sufficient to
16 form a belief about the truth of the allegations contained in this
17 paragraph, and therefore denies each and every allegation made in this
18 paragraph.

19 13. The answering Defendants lack knowledge or information sufficient to
20 form a belief about the truth of the allegations contained in this
21 paragraph, and therefore denies each and every allegation made in this
22 paragraph.

23 14. The answering Defendants lack knowledge or information sufficient to
24 form a belief about the truth of the allegations contained in this
25 paragraph, and therefore denies each and every allegation made in this
26 paragraph.

27 15. The answering Defendants lack knowledge or information sufficient to
28 form a belief about the truth of the allegations contained in this

1 paragraph, and therefore denies each and every allegation made in this
2 paragraph.

3 16.The answering Defendants deny each and every allegation contained in
4 this paragraph.

5 17.The answering Defendants lack knowledge or information sufficient to
6 form a belief about the truth of the allegations contained in this
7 paragraph, and therefore denies each and every allegation made in this
8 paragraph.

9 18.The answering Defendants lack knowledge or information sufficient to
10 form a belief about the truth of the allegations contained in this
11 paragraph, and therefore denies each and every allegation made in this
12 paragraph.

13 19.The answering Defendants lack knowledge or information sufficient to
14 form a belief about the truth of the allegations contained in this
15 paragraph, and therefore denies each and every allegation made in this
16 paragraph.

17 20.The answering Defendants lack knowledge or information sufficient to
18 form a belief about the truth of the allegations contained in this
19 paragraph, and therefore denies each and every allegation made in this
20 paragraph.

21 21.The answering Defendants lack knowledge or information sufficient to
22 form a belief about the truth of the allegations contained in this
23 paragraph, and therefore denies each and every allegation made in this
24 paragraph.

25 22.The answering Defendants lack knowledge or information sufficient to
26 form a belief about the truth of the allegations contained in this
27 paragraph, and therefore denies each and every allegation made in this
28 paragraph.

23. The answering Defendants deny each and every allegation contained in this paragraph.

24. The answering Defendants deny each and every allegation contained in this paragraph.

E. Previous Lawsuits

The answering Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph, and therefore denies each and every allegation made in this paragraph.

F. REQUESTS FOR RELIEF

Defendants deny that Plaintiff is entitled to any of the relief set forth in his Request for Relief on page 6 of the complaint.

Each and every allegation in Plaintiff's complaint not specifically admitted is hereby denied.

DEFENDANTS' AFFIRMATIVE DEFENSES

Defendants deny any and all liability in this matter and assert the following affirmative defenses:

1. Plaintiff has failed to state a claim for which relief can be granted.
2. Plaintiff has failed to state a cognizable constitutional claim pursuant to 28 U.S.C. § 242, 28 U.S.C. § 1343 (a)(3), 42 U.S.C. § 1983, and/or NRS 41.0322, 441A.220 and NRS 209.885.
3. At all times mentioned in Plaintiff's Complaint, Defendants did not personally participate in any of the alleged violations and/or were neither the cause-in-fact nor the proximate cause of Plaintiff's damages, if any.
4. Defendants are not legally responsible for the actions and/or omissions of other third parties.
5. Defendants are entitled to qualified immunity.
6. Defendants are entitled to discretionary act immunity.

1 7. Plaintiff's claims are barred pursuant to the doctrine of sovereign immunity
2 and the Eleventh Amendment of the United States Constitution.

3 8. Plaintiff's claims are barred as Plaintiff has failed, refused, or neglected to
4 take reasonable steps to mitigate his damages, therefore barring or diminishing his ability
5 to recover.

6 9. Plaintiff failed to exhaust his administrative remedies pursuant to the
7 Prisoner Litigation Reform Act, NRS 41.0322 and/or NRS 209.243, and NDOC
8 Administrative Regulation (AR) 740.

9 10. Defendants held an objective good faith belief that they were acting
10 reasonably and that their actions were privileged and legally justified.

11 11. There can be no recovery for damages under 42 U.S.C. § 1983 against
12 government officials acting in their official capacity.

13 12. Defendants at all relevant times acted with due care and circumspection in
14 the performance of their duties.

15 13. Plaintiff's claims for relief are barred as Plaintiff's damages are speculative
16 and cannot be calculated with any certainty or reliability.

17 14. Defendants are not the direct or proximate cause of the alleged constitutional
18 deprivations or tortious actions as alleged.

19 15. Defendants are immune from liability pursuant to Nevada Revised Statutes
20 §§ 41.031- 41.032 et. seq.

21 16. Defendants at all relevant times acted in good faith toward Plaintiff and
22 possessed a good faith belief that he was acting reasonably, and that his actions were
23 privileged and legally justified, and Defendants are entitled to qualified good faith
24 immunity from damages.

25 17. Plaintiff is barred from seeking punitive damages pursuant to Nevada law.

26 18. Plaintiff is barred from seeking an award of attorney fees pursuant to
27 42 U.S.C. § 1988 and § 1998.
28

1 19. Each purported claim for relief is barred by the doctrines of *res judicata*
2 and/or collateral estoppel.

3 20. Each purported claim for relief is barred as Plaintiff is estopped from
4 pursuing any claim against Defendants in accordance with equitable principles of
5 jurisprudence.

6 21. Plaintiff's claims for relief are barred by the applicable statute of limitations.

7 22. Each purported claim for relief is barred as Defendants are not legally
8 responsible for the actions and/or omissions of third-parties, including but not limited to
9 other named or Doe Defendants.

10 23. Each purported claim for relief is barred pursuant to the doctrine of unclean
11 hands.

12 24. Plaintiff's claims, or parts thereof, are barred due to the fact there is no
13 causation between the alleged facts and the damages sought in the Complaint.

14 25. Plaintiff is barred from receiving Court costs arising under 42 USC 1988 and
15 1997e.

16 26. Plaintiff is not entitled to prejudgment interest from the date of filing of his
17 initial Complaint.

18 27. Plaintiff has failed to provide for any cognizable damages.

19 28. Plaintiff's claims are barred, all or in part, because Defendants did not breach
20 any duty owed to Plaintiff.

21 29. Plaintiff's claims are barred, all or in part, due to a failure to satisfy a
22 condition precedent.

23 30. Plaintiff's claims are barred because, at all relevant times, Defendants acted
24 in accordance with applicable law and prison procedures.

25 31. Defendants presently have insufficient knowledge or information upon which
26 to form a belief as to whether it may have other, as yet unstated, defenses available. In
27 the event further investigation or discovery reveals the applicability of any additional
28 defenses, including but not limited to those affirmative defenses identified in Rule 8 of the

1 Nevada Rules of Civil Procedure, Defendants reserve the right to amend this Answer to
2 specifically assert such additional affirmative defenses.

3 **DEFENDANTS' PRAYER FOR RELIEF**

4 **WHEREFORE**, Defendants pray for judgment and relief of this Court as follows:

- 5 1. That Plaintiff's Complaint be dismissed with prejudice;
- 6 2. That Plaintiff take nothing by virtue of his Complaint;
- 7 3. For Defendants' attorneys' fees and costs of suit;
- 8 4. A jury trial is demanded; and
- 9 5. For such other relief as this Court may deem just and proper.

10 DATED this 15th day of April, 2024.

11 AARON D. FORD
12 Attorney General

13 By: /s/ Nathan M. Claus
14 NATHAN M. CLAUS (Bar No. 15889)
15 Deputy Attorney General

16 *Attorneys for Defendants*
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on April 15, 2024, I electronically filed the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT ECF NO. 11 JURY TRIAL DEMANDED** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada to the following:

Ronald Garren
Parkway Lodge
49 Park Street
Apt. 30
Reno, Nevada 89502

/s/ Andrea Beckett
ANDREA BECKETT, an employee of the
Office of the Nevada Attorney General